



May 1, 2000

Mr. Jeffrey L. Schrader  
Assistant Criminal District Attorney  
Civil Section  
Bexar County Justice Center  
300 Dolorosa, Fifth Floor  
San Antonio, Texas 78205-3030

OR2000-1677

Dear Mr. Schrader:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 136060.

The Bexar County District Attorney's Office (the "office") received a request for any and all information regarding a named individual including, but not limited to, all information relating to case number 94CR3589. You claim that the requested information is excepted from disclosure under sections 552.101, 552.103, 552.108, and 552.111 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

First, we note that the requestor asks for all information regarding a named individual which implicates section 552.101 and common law privacy.<sup>1</sup> Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Section 552.101 encompasses common law privacy. Where an individual's criminal history information has been compiled by a governmental entity, the information takes on a character that implicates the individual's right to privacy. *See United States Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749 (1989). Because the requestor asks for all information regarding the named individual, we believe that the individual's right to privacy has been implicated. To the extent that the office has any information pertaining to the named individual as a possible suspect, other than information related to case number 94CR3589, we conclude that you must withhold this information under section 552.101 of the Government Code. *See id.*

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<sup>1</sup>We note that the requestor also asks for information regarding case number 94CR3589 which does not implicate the protections of common law privacy.

Initially, we note that some of the submitted documents appear to have been filed with a court. Documents filed with a court are public documents and must be released. *See* Gov't Code § 552.022(a)(17) (providing that information contained in a public court record is public information); *Star-Telegram, Inc. v. Walker*, 834 S.W.2d 54, 57-58 (Tex. 1992). We have marked the documents which appear to have been filed with a court and which must be released.

You assert that documents in "Exhibit B" are excepted from disclosure under section 552.108(a)(2) of the Government Code. Section 552.108(a)(2) excepts from disclosure information concerning an investigation that concluded in a result other than conviction or deferred adjudication. You inform this office that the individual was indicted for aggravated sexual assault, but assert that the case was dismissed and, therefore, concluded in a result other than conviction or deferred adjudication. Based on your representation, we agree that section 552.108(a)(2) is applicable and your office may withhold the documents in "Exhibit B" under section 552.108(a)(2).

However, section 552.108 is inapplicable to basic information about an arrested person, an arrest, or a crime. Gov't Code § 552.108(c). We believe such basic information refers to the information held to be public in *Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177, 185 (Tex. Civ. App.—Houston [14th Dist.], writ ref'd per curiam, 536 S.W.2d 559 (Tex. 1976). *See also* Open Records Decision No. 127 (1976). However, you assert that section 552.101 of the Government Code and common law privacy protects the identity of the sexual assault victim. The doctrine of common law privacy protects information that contains highly intimate or embarrassing facts about a person's private affairs such that its release would be highly objectionable to a reasonable person and the information must be of no legitimate concern to the public. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 683-85 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Any information tending to identify sexual assault victims must be withheld pursuant to common law privacy. *See* Open Records Decision No. 393 (1983). Therefore, you must withhold the victim's identifying information. You have the discretion to release all or part of the remaining information that is not otherwise confidential by law. Gov't Code § 552.007.

Having found the information to be excepted from disclosure under section 552.108(a)(2), we need not address the other subsections of section 552.108, or sections 552.103 and 552.111. In conclusion, the office must withhold all other information relating to the named individual as a suspect under section 552.101 and common law privacy. Further, the office must release all the documents filed with a court and basic information. However, you must withhold information which identifies the victim of the sexual assault.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

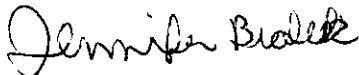
This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Jennifer Bialek  
Assistant Attorney General  
Open Records Division

JHB/nc

Ref: ID# 136060

Encl. Marked documents

cc: Mr. Douglas L. Haynes  
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(w/o enclosures)